



Office of the Comptroller of the Currency

Interpretations - Corporate Decision #96-47, Part 2

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**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION TO MERGE
PNC BANK, NATIONAL ASSOCIATION, PITTSBURGH, PENNSYLVANIA, WITH
MIDLANTIC BANK, NATIONAL ASSOCIATION, NEWARK, NEW JERSEY,
UNDER THE CHARTER OF THE LATTER AND WITH THE TITLE
PNC BANK, NATIONAL ASSOCIATION
August 20, 1996**

[First Part of Decision](#)

New Jersey also has enacted legislation, effective as of April 17, 1996, expressly permitting mergers with out-of-state banks. Under the New Jersey statute, New Jersey state-chartered banks may engage in an interstate merger transaction with out-of-state state banks or out-of-state national banks, with the branches of the participating banks becoming branches of the resulting bank. *See* 1996 N.J. Laws, ch. 17, 16 (merger with out-of-state state bank) (to be codified in a new section of N.J. Stat.) & 17 (merger with out-of-state national bank) (amending N.J. Stat. 17:9A-148). <NOTE: In these provisions, "bank" includes various New Jersey chartered institutions such as banks and trust companies. "Interstate merger transaction" means "(1) The merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or (2) The purchase of all or substantially all of the assets, the assumption of all or substantially all of the liabilities, or both, including all or substantially all of the branches, of a bank whose home state is different from the home state of the acquiring bank." "Home state" means with respect to a national bank, the state in which the main office is located. 1996 N.J. Laws, ch. 17, 2 (restating and amending N.J. Stat. 17:9A-1(1), (21) & (25)). While the New Jersey statute does not expressly address mergers between national banks whose home state is New Jersey and out-of-state banks, that is irrelevant in the Riegle-Neal analysis. The criteria needed in the state law to trigger the early merger authority of section 1831u(a)(3)(A) relate only to whether the state has a law permitting mergers with *all out-of-state banks*. New Jersey's statute does so. If the state has such a law, then the Riegle-Neal Act (12 U.S.C. 215a-1 & 1831u(a)) authorizes national banks in the state to enter such mergers. Moreover, a Statement accompanying the New Jersey legislation specifically states: "This bill, in response to the provisions of the federal 'Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994,' provides for: nationwide interstate banking; interstate branching by acquisition and merger transactions between *any combination* of federally and state chartered insured depository institutions in those states not opting out of the provisions concerning interstate branching...." *See* Statement attached to Senate Bill No. 307 (emphasis added). Thus, the legislation clearly contemplates that interstate mergers involving national banks in New Jersey will occur.

The New Jersey statute also contains a nationwide reciprocal treatment condition. Interstate merger transactions are not permitted before June 1, 1997, "unless the home state of each institution involved in the transaction has in effect, as of the date of the approval of that transaction, a law that applies equally to all out-of-state banks and expressly permits interstate merger transactions with all out-of-state banks." N.J. Stat. 17:9A-148(F) (added by 1996 N.J. Laws, ch. 17, 17). *See also* 1996 N.J. Laws, ch. 17, 16(c) (similar reciprocal treatment condition for mergers with out-of-state state banks). In reviewing similar reciprocity conditions in state statutes with regard to the establishment of *de novo* interstate branches under 12 U.S.C. 36(g), the OCC concluded the presence of a nationwide reciprocal treatment condition did not cause the state law to fail to meet the provisions of section 36(g)(1)(A), which are substantially similar to the provisions of section

1831u(a)(3)(A). *See* Decision on the Application of Patrick Henry National Bank, Bassett, Virginia, to Establish a Branch in Eden, North Carolina (OCC Corporate Decision No. 96-04, January 19, 1996). The same analysis applies here, and so the presence of a nationwide reciprocal treatment condition does not mean the New Jersey law fails to trigger the early interstate merger authority of section 1831u(a)(3). *See also* Decision on the Application of NationsBank, N.A., Richmond, Virginia, and NationsBank, N.A. (Carolinas), Charlotte, North Carolina (OCC Corporate Decision No. 95-47, September 27, 1995) (at pages 5-6) (Rieggle-Neal merger).>

Thus, both Pennsylvania and New Jersey have laws that apply equally to all out-of-state banks and that expressly permit interstate merger transactions with all out-of-state banks. Therefore, the early interstate merger transaction authority of section 1831u(a)(3) is triggered for the merger between PNC and Midlantic.

C. The proposed merger between PNC and Midlantic meets the requirements and conditions in 12 U.S.C. 1831u(a) & 1831u(b).

An application by national banks to engage in an interstate merger transaction under 12 U.S.C. 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, if any; (2) compliance with state filing requirements; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. In addition, during the early opt-in period, the application may also be subject to state-imposed conditions permitted under section 1831u(a)(3)(B), if any, that pertain to the initial merger itself (as distinct from conditions relating to the later on-going operations of the branches of the resulting out-of-state bank until May 31, 1997).

PNC's and Midlantic's Merger Application satisfies all these conditions to the extent applicable. First, the proposed merger satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. 1831u(a)(5)(A). In this Merger Application, while PNC and Midlantic are combining under Midlantic's charter, the Resulting Bank will have Pittsburgh as its main office under 12 U.S.C. 1831u(d)(1), *see* Part II-D below. Thus, after the merger, Pennsylvania will be the home state of the Resulting Bank, and New Jersey will be a host state. It is not clear whether New Jersey is also the host state for purposes of section 1831u(a)(5). Since the merger is occurring under Midlantic's charter, it might be argued that Midlantic (a New Jersey bank) is acquiring a bank in Pennsylvania. On the other hand, "acquire" is not a defined term in section 1831u, and it might be argued that "host state" in paragraph 1831u(a)(5) should be construed similarly to "host state" in other provisions in section 1831u. In addition, with respect to the bank holding company, PNC Bank Corp., New Jersey is clearly a host state. We need not resolve this question here, since the merger would satisfy the host-state imposed age limit under either view. First, although the New Jersey law contains no minimum-age requirement, the Department of Banking applies regulations to protect from acquisition banks in existence less than five years. *See* N.J.A.C. 3:1-2.20(a)2. On June 3, 1996, the Department of Banking proposed new rules to eliminate this minimum-age requirement from the regulations. *See* 28 N.J.R. 2661 (June 3, 1996). In any case, Midlantic (and its predecessor banks) has been in existence for far longer than five years. Second, the Pennsylvania law also contains no minimum age requirement for mergers with out-of-state banks, and PNC (and its predecessors) has been in existence for far longer than five years. Thus, the PNC/Midlantic merger satisfies the Rieggle-Neal Act requirement of compliance with state age laws.

Second, the proposal meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host State. *See* 12 U.S.C. 1831u(b)(1). The New Jersey interstate bank merger and branching statute does not appear to contain a "qualify to do business" filing requirement applicable to out-of-state banks with branches in New Jersey. The New Jersey statute requires an application to, and approval of, the commissioner of the Department of Banking prior to the merger of a New Jersey state-chartered bank with an out-of-state state bank. *See* 1996 N.J. Laws, ch. 17, 16. However, the New Jersey statute is silent with respect to any filing or approval requirement with respect to a national bank whose home state is New Jersey. PNC submitted a copy of its OCC Merger Application to the New Jersey commissioner. Thus, the PNC/Midlantic satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

Third, the proposed interstate merger transaction does not raise issues with respect to deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. *See* 12 U.S.C. 1831u(b)(2)(E). PNC and Midlantic are affiliates.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant banks' record of compliance with applicable state community reinvestment laws. *See* 12 U.S.C. 1831u(b)(3). However, this provision applies only "for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction." 12 U.S.C. 1831u(b)(3). *See also* H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 52 (1994). In this Merger Application, PNC and Midlantic are already affiliates, each already had branches in both Pennsylvania and New Jersey, and neither is otherwise obtaining a branch or bank affiliate in any state in which it did not have a branch or bank affiliate before. Thus, this Riegle-Neal provision is not applicable to the Merger Application. However, the Community Reinvestment Act itself is applicable, *see* Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. *See* 12 U.S.C. 1831u(b)(4). As of the date the application was filed, both PNC and Midlantic satisfied all regulatory and supervisory requirements relating to adequate capitalization, including the standards prescribed by 12 U.S.C. 1831o(b)(1)(A). Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the merger, PNC-Resulting will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. 1831u(b)(4) are therefore satisfied.

Finally, Congress permitted host states to impose conditions on a branch in the host state resulting from an interstate merger during the early opt-in period (*i.e.*, until June 1, 1997), provided the condition does not discriminate against out-of-state banks, is not preempted by federal law, and does not apply or require performance after May 31, 1997. *See* 12 U.S.C. 1831u(a)(3)(B) (quoted above at page 3). In the present Merger Application, the host state of New Jersey has imposed a reciprocity condition on the permissibility of interstate mergers. Under the New Jersey statute, before June 1, 1997, interstate mergers are not permitted if the laws of the home state of the out-of-state bank do not expressly permit interstate merger transactions with all out-of-State banks. *See* P.L. 1996, c. 17, section 16(c). In other words, it is a condition for an interstate merger transaction between an out-of-state bank and a New Jersey bank that the home state of the out-of-state bank permit New Jersey banks to acquire banks in that state. Such a reciprocal treatment condition, provided it is nationwide and does not discriminate among states, was specifically addressed by Congress as among the conditions permitted under section 1831u(a)(3) for interstate merger transactions under the Riegle-Neal Act. *See* 12 U.S.C. 1831u(a)(3)(B) (parenthetical phrase). Thus, for mergers before June 1, 1997, it is a permissible condition. Pennsylvania permits out-of-state banks, including New Jersey banks, to merge with Pennsylvania banks. *See* 7 P.S. 1602(a) (quoted above at page 7). Thus, the PNC/Midlantic merger complies with the reciprocal treatment condition permitted by the Riegle-Neal Act.

D. Following the merger, PNC-Resulting may retain all the banking offices of both merging banks.

The Applicants have requested that upon the completion of the merger PNC-Resulting (as the resulting bank in the merger) be permitted to retain and continue to operate PNC's existing main office in Pittsburgh as the main office of the resulting bank and to retain and continue to operate as branches (1) PNC's existing branches and (2) Midlantic's main office and branches. In an interstate merger transaction under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

(1) Continued Operations. -- *A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.*

12 U.S.C. 1831u(d)(1) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. 1831u(f)(11). In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

(d) Branches Resulting From Interstate Merger Transactions. -- *A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.*

12 U.S.C. 36(d) (as added by Riegle-Neal Act 102(b)(1)(B)). Therefore, PNC-Resulting, the resulting bank in this interstate merger transaction, may retain and operate PNC's main office in Pittsburgh as its main office under section 1831u(d)(1) (emphasized provisions above), and it may retain and continue to operate as branches all the other existing banking offices of both merging banks under 12 U.S.C. 36(d) & 1831u(d)(1). <NOTE: By its action in adding section 36(d), Congress made it clear that section 44(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 44 and that it operates independently of the provisions for branch retention in mergers under 12 U.S.C. 36(b)(2). Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). Further, Congress certainly was aware of the McFadden Act's existing

provisions for branch retention in mergers at the time it acted on Section 44, since the OCC had approved interstate main office relocation transactions that also involved mergers with affiliate banks in which the resulting bank's authority to retain branches was based on section 36(b)(2). The Conference Report to the Riegle-Neal Act makes reference to such OCC decisions. *See* H.R. Conf. Rep. No. 651, 103d Cong., 2d Sess. 57 (1994). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u. Thus, PNC-Resulting's retention of branches in these Merger Applications is authorized under sections 36(d) and 1831u(d)(1), without regard to the complex branch retention provisions of section 36(b)(2) and the detailed inquiry into state law required thereunder.> Moreover, at its branches in both states PNC-Resulting, as the resulting national bank in the merger, will continue to engage in the activities, including fiduciary activities, that its predecessor banks were engaged in. *See, e.g.*, 12 U.S.C. 215a-1 (Riegle-Neal mergers of national banks occur under the National Bank Consolidation and Merger Act) & 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks). *See also* OCC Interpretive Letter No. 695, *reprinted in* Fed. Banking L. Rep. [Current] (CCH) 81,010 (December 8, 1995) (national banks may engage in fiduciary business at trust offices and branches in different states). *Cf.* 12 U.S.C. 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

A. The Bank Merger Act.

The Bank Merger Act, 12 U.S.C. 1828(c), requires the OCC's approval for any merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger which would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Applications may be approved under section 1828(c).

1. Competitive Analysis

Since PNC and Midlantic are already owned by the same bank holding company, their merger would have no anticompetitive effects.

2. Financial and managerial resources

The financial and managerial resources of both banks are presently satisfactory. PNC-Resulting expects to achieve efficiencies by combining the two banks, eliminating overlapping offices and duplication of many back-office functions. Each bank operates at offices in both states, and their combination into one bank will provide the resulting bank with even greater geographic diversification within both states. The future prospects of the existing institutions, individually and combined, are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the Merger Application.

3. Convenience and needs

The resulting bank will help to meet the convenience and needs of the communities to be served. The resulting bank will continue to serve the same areas in both states now served by the merging banks. It will continue to offer a full line of banking products and services. Upon completion of the merger, customers each bank will have available to them a significantly greater number of branches at which to bank. Especially benefitting will be those customers who live in one state and work in another or who

frequently travel between cities in different states. Following the merger, customers would be dealing with the same bank in both states and will be able to readily access their accounts. Businesses that have operations in the different states will similarly benefit. The PNC and Midlantic branch networks overlap in some locations. Accordingly, PNC-Resulting has identified branches it plans to close, some of which are Midlantic branches, others of which are PNC branches. These branches are generally in close proximity to another branch of the resulting bank which will remain open and take over the business of the branch being closed. In each instance the bank followed its established branch closing policy, which was previously determined by the OCC to be both an objective means of identifying branches to be closed and in compliance with regulatory guidelines. Also, this policy requires that designated CRA officers contact community members when a branch closing is being considered. Historically the bank's record of considering the needs of the community, which includes making contact with community members, when deciding which branches will be closed or consolidated is considered to be good. Consequently there should be little noticeable disruption in satisfying the needs and convenience of customers in those communities where branches are to be closed. Appropriate notice was provided to customers of the affected branches and at the branches under 12 U.S.C. 1831r-1. We believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Application.

B. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. *See* 12 U.S.C. 2903. Based on the OCC's most recent examination, PNC has an outstanding rating and Midlantic has a satisfactory rating with respect to CRA performance.

The merger is not expected to have any adverse effect on the resulting bank's CRA performance. The resulting bank will continue to serve the same delineated communities that the merging banks currently serve. PNC-Resulting will carry forward the same CRA programs and policies that PNC has today, adding areas served by Midlantic to its delineated community. As a general matter, the resulting bank will have the same commitment to helping meet the credit needs of all the communities it serves as PNC and Midlantic have today. The merger and operation of interstate branches do not alter the resulting bank's obligation to help meet the credit needs of its communities in all the states it serves. Based upon the information currently available, we do not believe the planned branch closings will adversely affect the CRA performance of the resulting bank. In addition, as provided in the CRA regulations, the effects of the closings will be considered in future CRA evaluations of the resulting bank. We find that approval of the proposed merger is consistent with the Community Reinvestment Act.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, the merger of PNC and Midlantic is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. 215a-1 & 1831u(a). The resulting bank is authorized to retain and operate the offices of both banks under 12 U.S.C. 36(d) & 1831u(d)(1). The merger also meets the criteria for approval under other statutory factors. Accordingly, this Merger Application is hereby approved.

/s/

08-20-96

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